83 - 1525

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CHARLES F. CARROLL, JR.,

Petitioner,

vs.

WILBUR B. SCOTT, SHERIFF OF DE KALB COUNTY, ILLINOIS, and DE KALB COUNTY, ILLINOIS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Does a written or oral report that creates the impression of an intentional tort as distinguished from an accident requires a name clearing hearing for the purpose of expunging such a report from a police officer's personnel file?

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OPINIONS BELOW

On February 7, 1983, the Honorable Bernard M. Decker of the United States District Court of Illinois, Eastern Division, granted the respondents' motion for summary judgment.

The basis for the United States District Court's decision was that the petitioner had no liberty interest protection under 42 U.S.C. § 1983, since the petitioner had failed to allege that a report to a prospective employer was substantially false (the decision of the District Court is reprinted herein as Appendix B).

The report concerned a written communication from the Sheriff of DeKalb County, Illinois to the Merit Commission of DeKalb County which stated that the petitioner had squirted a liquid cleaning solution containing chemicals into the face of an inmate during the course of his employment as a Probationary Deputy Sheriff of DeKalb County, Illinois. The aforesaid report was required pursuant to the rules and regulations of the Merit Commission of DeKalb County.

Subsequently, the petitioner applied for a police position with the Northern Illinois University Police Department and was advised by the interviewer for that Department, Fred Blakey, that he required a name clearing hearing in that the Merit Commission of DeKalb County, Illinois, confirmed orally that he had squirted a liquid cleaning solution containing chemicals into the face of an inmate which created the impression upon the Northern Illinois University Police Department that the petitioner had been involved in an intentional tort interpreted as brutality.

On December 14, 1983, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, affirmed the judgment of the Honorable Bernard M. Decker which granted respondents' motion for summary judgment (the decision of the Court of Appeals is reprinted herein as Appendix A).

JURISDICTION

1. The federal question was raised by the petitioner in his complaint for declaratory judgment and other relief alleging that he was deprived of his liberty, under the Fifth and Fourteenth Amendments of the United States Constitution, in that his good name, reputation, honesty and integrity had been impaired by the respondents' communicating in writing and orally false information to the effect that the petitioner squirted cleaning solution containing chemicals into the face of an inmate, which information created the impression of an intentional tort resulting not only in the termination of petitioner's employment as a Probationary Deputy Sheriff with the DeKalb County of Illinois Sheriff's Department, but affected his future opportunity to be employed by the Northern Illinois University Police Department.

2. That the petition for writ of certiorari was filed within ninety days after the entry of the judgment by the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois on December 14, 1983.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

That, prior to January 27, 1982, the petitioner was employed as a probationary deputy by the Sheriff's Department of DeKalb County, Illinois.

That, on January 27, 1982, the respondents provided a letter of termination to the petitioner alleging that the petitioner squirted a liquid cleaning solution containing chemicals in the face of an inmate which could have caused serious medical injury to the inmate.

That, on or about February 10, 1982, the petitioner applied for a police position with Northern Illinois University in which the petitioner was told he could not be hired without a name clearing hearing, since his termination with the Sheriff's Department of DeKalb County related to a brutality charge, which fact was disputed by the petitioner.

That the petitioner filed a complaint for declaratory judgment and other relief pursuant to 42 U.S.C. § 1983 and pursuant to the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution, wherein he alleged that the respondents had communicated false information resulting in the termination of the petitioner without a name clearing hearing thereby depriving the petitioner of his liberty under the Fifth and Fourteenth Amendments of the United States Constitution by creating the impression that he had committed an intentional tort.

REASONS FOR GRANTING THE WRIT

A WRITTEN OR ORAL REPORT THAT CREATES THE IMPRESSION OF AN INTENTIONAL TORT AS DISTINGUISHED FROM AN ACCIDENT REQUIRES A NAME CLEARING HEARING FOR THE PURPOSE OF EXPUNGING SUCH A REPORT FROM A POLICE OFFICER'S PERSONNEL FILE.

In its opinion, on page 4, the United States Court of Appeals holds that, since the petitioner, in this instance, did not dispute that he pointed a bottle of cleaning fluid at the inmate and does not dispute the fact that the inmate was struck in the face with the fluid, the question of whether the incident was an accident is not sufficient to challenge the accuracy of the Sheriff's letter which stated that the petitioner had squirted a solution of cleaning fluid containing chemicals into the face of an inmate who was under his direct care and control (letter of Sheriff dated January 27, 1982, is reprinted herein as Exhibit C).

It is the contention of the petitioner that the content of the letter is false, since it creates the impression that the petitioner's actions were intentional and not accidental.

Further, it is the contention of the petitioner that the United States Court of Appeals and the United States District Court are in error when they base their decisions upon *Codd v. Velger*, 429 U.S. 624 (1977).

In its decision, in this instance, the United States District Court holds that the facts in *Codd* are similar to those of the petitioner in that the officer in *Codd* stated that the incident was "horseplay".

However, based on the analysis of the facts in *Codd*, those facts are distinguishable from those of the petitioner.

The distinguishing facts in *Codd* are evident when the Court states:

> "Nowhere in his pleadings or elsewhere has respondent affirmatively asserted that the report of the apparent suicide was substantially false."

However, the petitioner, herein, in his Complaint for Declaratory Judgment and Other Relief, affirmatively asserts that the reports that he squirted fluid on the inmate are substantially false, since they create the impression that he had committed an intentional tort.

The District Court on page 6 of its decision states that since the petitioner did not deny that he "thrust a bottle of cleaning fluid toward the inmate," but characterized the incident as "joking around", was not enough to raise an issue about the substantial accuracy of the report.

However, unlike the petitioner in *Codd*, who only stated that holding a gun to his head was merely "horseplay", and did not allege that the report of suicide was false, the petitioner herein asserted that the incident was accidental and had alleged that respondents' had communicated false reports.

Since the reports of the respondents state that the petitioner squirted the inmate, the District Court's statement, "the presence or absence of intent on his part to 'squirt' Mangan—was not even a factor in his dismissal" is clearly erroneous; and the substantial accuracy of these reports are false because this incident was accidental and not intentional.

Therefore, the petitioner has raised an issue about the substantial accuracy of the reports of the respondents.

As a result, the facts in the petitioner's case establish that he has a liberty interest in a name clearing hearing because as the Court states in *Codd*:

> "Only if the employer creates and disseminates a false and defamatory impression about the employee in connection with his termination is such a hearing required."

It is the petitioner's contention that the respondents created and disseminated a false and defamatory impression about the petitioner when they created the impression of an intentional tort via their reports concerning the squirting of an inmate incident by the petitioner.

The false and defamatory impression created by the respondents is that the incident was or could have been accidental, which is supported by the affidavits and depositions taken through discovery in conjunction with the motion for summary judgment.

Based upon the actions of the respondents, the communication by the Sheriff's Department to the Chairman of the Merit Commission which created the impression that the petitioner had intentionally squirted a caustic liquid substance into the face of a prisoner was false, and that false communication conveyed by the Merit Commission to Fred Blakey stigmatized the petitioner's reputation which, in fact, resulted in the loss of an employment opportunity; namely, employment as a police officer with the Northern Illinois University Police Department. See *Larry v. Lawler*, 605 F.2d at 958, and *Paul v. Davis*, 424 U.S. 693, 712 (1976).

Consequently, the petitioner has established that he is entitled to a name clearing hearing under the Due Process

Clause of the Fifth and Fourteenth Amendments of the United States Constitution and that the District Court erred in granting a summary judgment in favor of the respondents in this case. See *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) and *Bishop v. Wood*, 426 U.S. 341 (1976).

A decision which supports the petitioner's argument in this petition for writ of certiorari is *Croushorn v. Board of Trustees of the University of Tennessee*, 511 F. Supp. 9 (1980).

In *Croushorn*, the petitioner had derogatory information inserted into his personnel file in violation of his First Amendment rights. The Court held that this information had to be expunged from his personnel file since the petitioner would have a problem in securing new employment.

On page 40, the *Croushorn* Court states:

> "According to his testimony, plaintiff expects to change jobs during his career, and the materials in his file may well have an adverse effect on his job opportunities. Although the court does not know when plaintiff will choose to change employment, the court is certain that when he does so, an extremely high probability exists that the prospective employer will request access to the personnel files. When that occurs, plaintiff will be presented with a variable Hobson's choice of whether to grant or refuse such access. One who sees the files will naturally question plaintiff's veracity after reading statements made by his former employer and others charging that letters written by plaintiff contained inaccuracies and distortions of the truth on the other hand, a prospective employer whose request to see the files is refused by plaintiff is also likely to view plaintiff in an unfavorable light. Either way, plaintiff runs a substantial risk of losing the job possibility solely because of the materials that defendants placed in his files.

> The legitimacy of this fear has already been demonstrated by plaintiff's difficulties in locating employment after his termination by the University."

Although in *Croushorn*, the case concerned the violation of First Amendment rights, the Court states that false reports in personnel files can be subject to due process claims, which petitioner is asserting in his action for a name clearing hearing.

In *Croushorn*, on page 41, the Court states:

> "Apparently if plaintiff were claiming that inclusion of these materials without affording him an opportunity to rebut the charges contained therein violated a property or liberty interest protected by the due process clause, failure to prove the falsity of the statements would be fatal to his case. See, e.g., Codd v. Velger, 429 U.S. 624, 97 S.Ct. 882, 51 L. Ed. 2d 92 (1977); Ledford v. DeLanoy, 612 F.2d 883 (4th Cir. 1980). Plaintiff's claim is not so based. Furthermore, the court believes that due process is not the only constitutional ground upon which one may predicate a claim seeking expunction of material contained in a personnel file."

Since the petitioner has alleged that the report concerning the squirting of the inmate was false under *Codd*, and since pursuant to the affidavits of the respondents, these reports have been retained in the permanent files of the Sheriff's Police Department, the petitioner should have these reports expunged from his personnel file. If the petitioner is not permitted to have these records expunged, he will be unable, in all probability, to secure other employment in the law enforcement field, which has already occurred on the basis of his denial of employment as a police officer at Northern Illinois University.

The petitioner should be granted a name clearing hearing to establish that the reports of the respondents are

false because they create the impression that he intentionally squirted fluid on the inmate, when, in fact, the incident was accidental.

Based upon the language previously stated on page 40 of the *Croushorn* decision, this Court should expunge and order these reports removed from petitioner's personnel file in order to ensure that the petitioner will be able to continue working in the law enforcement field, since future employers will inquire the reasons for his termination from the DeKalb Sheriff's Department.

CONCLUSION

For reasons given, this petition should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

(Argued November 15, 1983)

December 14, 1983.

Before
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. J. SAM PERRY, Senior District Judge*

CHARLES F. CARROLL, JR.,

Plaintiff-Appellant,

No. 83-1441 vs.

WILBUR B. SCOTT, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 82 C 1693—**Bernard M. Decker, *Judge.***

ORDER

The issues in this appeal are whether there remained material issues of fact which would render inappropriate

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* The Honorable J. Sam Perry, Senior District Judge for the Northern District of Illinois, sitting by designation.

an award of summary judgment and whether the appellees infringed upon the appellant's liberty interest in his reputation by communicating false, derogatory information to a prospective employer. The district court held that the appellant had failed to allege that the report to the prospective employer was substantially false. We affirm.

I.

The appellant was a probationary deputy sheriff with the DeKalb County Sheriff's Department. The district court found that on January 13, 1982, the appellant thrust a bottle of cleaning fluid at an inmate then under his direct care and control; some of the fluid hit some part of the inmate's face. After an internal investigation, appellee Scott, DeKalb County Sheriff, discharged the appellant; Scott concluded that the appellant squirted the inmate with the cleaning fluid, although Scott noted that the appellant may have intended his actions as a prank. The Sheriff reported the termination and the reasons therefore to the Chairman of the DeKalb County Sheriff's Merit Commission (the Merit Commission), as the Sheriff was required to do by Merit Commission regulations.

The district court also found that on or about January 29, 1982, the appellant applied for a position as a police officer at Northern Illinois University (N.I.U.). On his application the appellant noted that he had been terminated by the Sheriff's Department. He explained to the interviewer that he had thrust a bottle of cleaning fluid at the inmate and that it was an accident. The interviewer then contacted the chairman of the Merit Commission, who apparently was also an employee of N.I.U. The interviewer asked the chairman if the appellant's version of the incident was correct; the chairman said that it was and that the appellant was terminated for cause. The interviewer never contacted the Sheriff's office. The interviewer then advised the appellant that the appellant would not be allowed to take the examination for a position as a police

officer with N.I.U.; the appellant was allowed to take examinations for some non-law-enforcement positions.

The appellant subsequently brought this action pursuant to 42 U.S.C. § 1983, alleging that the appellees had infringed upon his liberty interests in his good name by terminating him on the basis of a false charge without providing the appellant an opportunity for a hearing and by communicating this false information to a prospective employer.

The district court granted the appellee's motion for summary judgment. The court held that the appellant had failed to allege that the charge against him was substantially false. The appellant's allegation that the act was unintentional or an accident was not, according to the district court, sufficient to challenge the substantial accuracy of the report. The appellant filed a timely notice of appeal to this Court.

II.

The appellant raises two issues on appeal. He first claims that the district court erred in granting summary judgment to the appellees because disputed issues of fact exist. The appellant also claims that the appellees violated his rights under the due process clause of the Fourteenth Amendment by communicating false information about the appellant to a prospective employer without first giving the appellant an opportunity to clear his name at a hearing. We hold that no relevant issues of fact remain and that the appellant's liberty interests were not infringed because the appellant does not challenge the substantial accuracy of the report to the Merit Commission and because the appellees never voluntarily disclosed the report.

A.

The appellant cites four examples of disputed facts to support his claim that summary judgment was improper. Three of these alleged factual disputes concern whether the

appellant intentionally squirted the inmate with cleaning fluid. The remaining alleged factual dispute concerns the extent to which the appellant himself communicated the reasons for his discharge to the prospective employer. Because neither of these factual disputes are relevant to a resolution of this case, we reject the appellant's claim that disputed issues of fact remain.

The district court found that the presence or absence of intent on the appellant's part was not a factor in his dismissal. In the passage of the Sheriff's deposition cited by the appellant, the Sheriff states that whether the appellant intended to injure the inmate was immaterial; the Sheriff continued: "The prospect that this person could have been injured is what I took into consideration." Scott deposition at 14. Because the question of intent was not part of the decision to terminate the appellant, a continuing dispute as to the appellant's intent is not a relevant disputed fact which would render disposition by summary judgment unwarranted. *Quinn v. Syracuse Model Neighborhood Corporation*, 613 F.2d 438, 445 (2d Cir. 1980).

The district court explicitly found that a disputed issue of fact existed concerning the extent to which the appellant himself disclosed the information to the prospective employer. Because the district court held that the appellant had failed to allege that the reason given for his termination was substantially false, however, the district court did not reach the disclosure issue; because the district court correctly entered summary judgment against the appellant, we also do not reach this factual issue.

B.

The appellant's principal claim on appeal is that the district court erred when it held that the appellant had failed to allege that the charge underlying his termination was substantially false. The district court relied on *Codd v. Velger*, 429 U.S. 624 (1977), where the Supreme

Court held that an allegation that the discharged employee did not intend the act which led to his termination was insufficient to challenge the substantial truth of the matter in question. An allegation that the report of the termination is substantially false is required. *Id.* at 627. The respondent in *Codd* was discharged from his job as a New York City police officer for holding a gun to his head in an apparent suicide attempt. The discharged officer subsequently brought a suit demanding a hearing to challenge a report of the incident which had been placed in his personnel file and later disclosed to an employer. The Court held that the respondent's allegation that the act was a mistake or a joke was not enough to raise an issue about the substantial accuracy of the report of his termination. *Id.* at 628. Similarly, the appellant in this case does not dispute the fact that he pointed a bottle of cleaning fluid at the inmate; he also does not dispute the fact that the inmate was struck in the face with the fluid; he only claims that the incident was an accident. *Codd* would appear to direct the Court to hold that this allegation is insufficient to challenge the accuracy of the Sheriff's letter.

To infringe upon a liberty interest the government must communicate untrue charges. *Painter v. F.B.I.*, 694 F.2d 255, 256 (11th Cir. 1982). We also hold that neither of the appellees communicated derogatory information about the appellant in any way that infringed upon the appellant's liberty interest. The appellant does not dispute the fact that the Sheriff did not directly communicate the contents of his letter to N.I.U. The communication that the appellant attacks is the communication from the Sheriff to the Merit Commission. An involuntary, required disclosure, however, does not deprive a discharged employee of a liberty interest. *Kendall v. Board of Education of Memphis City Schools*, 627 F.2d 1, 5 (6th Cir. 1980). Here, the Merit Commission's regulations require the Sheriff to make the disclosure he made. Article III, B., 12, Rules and Regulations, DeKalb County Sheriff's Department Merit Commission. Such rules and regulations have the

force of law. *Northern Illinois Automobile Wreckers and Rebuilders Ass'n v. Dixon*, 75 Ill. 2d 53, 58, *cert. denied*, 444 U.S. 844 (1979). The disclosure to the Merit Commission cannot, therefore, serve as the basis for a claimed deprivation of a liberty interest. Because the Sheriff's Department made no other disclosure, the district court's entry of summary judgment as to the Sheriff must be affirmed.

A similar result is appropriate with respect to DeKalb County. The Commission is a body independent of the Sheriff's Office. Ill. Rev. Stat. ch. 125 ¶ 157. The County cannot be held liable under a theory of *respondeat superior*, *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 663-64 n.7 (1978), and the appellant has failed to allege that the disclosure by the Merit Commission was pursuant to the County's official policy. *Id.* at 694. The regulations in fact require that the Merit Commission's records be kept confidential. Art. I., G. 1. Rules and Regulations, DeKalb County Sheriff's Department Merit Commission. Because the disclosure was not made pursuant to an official policy of DeKalb County, therefore, the summary judgment entered in favor of DeKalb County must also be affirmed. Accordingly, the summary judgment entered by the district court against the appellant and in favor of the appellees is affirmed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHARLES F. CARROLL, JR.,

Plaintiff,

No. 82 C 1693 -vs-

WILBUR B. SCOTT, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER
(Docketed February 8, 1983)

Plaintiff, Charles F. Carroll ("Carroll"), a DeKalb County Sheriff's Deputy, on probationary status, was discharged from that position by defendant, Wilbur B. Scott ("Scott"), acting on behalf of defendant, DeKalb County, Illinois ("the county"). Discharge was based on Carroll's allegedly having squirted a solution of cleaning fluid containing toxic chemicals into the face of an inmate, Vincent Mangan ("Mangan"), then under his direct care and control. While conceding that, as a probationary employee, he had no property interest in his employment entitling him to a pre-termination hearing as a matter of due process, Carroll contends that he was unconstitutionally deprived of his liberty interest in his good name by being terminated on the basis of a false charge of misconduct without an opportunity for a name-clearing hearing. Carroll has brought this action under 42 U.S.C. §1983, seek-

ing reinstatement and damages. Defendant Scott has moved for summary judgment.

I. *Factual Background.*

There is no dispute between the parties that on the night of January 23, 1982, while on duty at the DeKalb County jail, plaintiff Carroll thrust a bottle of caustic cleaning fluid toward Mangan, and some of that fluid hit some part of Mangan's face. Scott, in his affidavit, states that Carroll "squirted" the fluid in Mangan's face, "although he may have intended his actions as a prank." Carroll asserts in his affidavit that he "jokingly" thrust the bottle toward the inmate and that fluid "accidentally" escaped, striking the inmate's chin.

Scott arrived at this conclusion as to what had transpired based on an internal investigation conducted by Captain James W. Laben ("Laben"). Following receipt of a written complaint about the incident from Mangan, Laben and Lieutenant Dave Munch interviewed Carroll, Mangan, Deputy Sheriff Michael Berry (an eyewitness), and Deputy Sheriff G. Epsy (the first person notified of the incident by Mangan). Written statements were taken from each and submitted to Scott with a letter containing Laben's conclusions.

Because Carroll was a probationary employee, Scott discharged him on the basis of the internal investigation, without the DeKalb County Sheriff's Police Merit Commission hearing to which Carroll would have been entitled were he a tenured employee. Carroll was terminated on January 27, 1982, effective immediately, and was informed in writing by Scott that it was because of the cleaning fluid incident. Scott observed in his letter to Carroll that the incident "could have caused serious medical injury to the inmate," and concluded that, "[a]s a Correctional Officer the safety and well being of an inmate under your charge is the most important responsibility you have. Engaging in any conduct or activity which comprimises [sic] that responsibility cannot and will not be tolerated."

Defendant's Exhibit B. Scott also wrote to Gary G. Smith ("Smith"), the Chairman of the DeKalb County Sheriff's Police Merit Commission, informing him of Carroll's termination and the reason therefor.

On or about January 29, 1982, Carroll applied for a position as a police officer at Northern Illinois University in DeKalb. He was interviewed by Personnel Officer Fred Blakey ("Blakey") and filled out an application form. Both a copy of the application and an affidavit of Blakey are attached to defendant's motion for summary judgment. The application indicates that Carroll was "terminated" from his position as a DeKalb County Deputy Sheriff "under questionable circumstances. Because of this they are hostile towards me." The affidavits of Blakey and Carroll diverge on the question of what the latter told the former when he inquired at the interview about the reasons for Carroll's termination. Blakey states that, "Carroll replied that he had squirted cleaning fluid on the chin of an inmate. He explained that he was merely joking around and that it was an accident." Carroll states that "I informed Mr. Blakey that I had thrust a bottle of cleaning liquid substance toward a jail inmate and that it was an accident. . . . I never stated nor admitted to Fred Blakey that I had squirted the cleaning fluid."

Blakey advised Carroll that he would contact the DeKalb County Sheriff's Department concerning the circumstances of Carroll's termination before proceeding further with his employment application. Responding to Blakey's inquiry as to whether Carroll had been discharged for "squirting" cleaning fluid in an inmate's face, Smith stated that that was the case. Blakey decided that it would not be in the best interest of Northern Illinois University to permit Carroll to take the examination required for the police officer position, but, Blakey's affidavit states, he did authorize Carroll to take the examinations for some non-law enforcement positions at the university.

II. *The Plaintiff's Liberty Interest.*

Supreme Court decisions over the last decade have firmly established that even a state employee who serves at the will of the employer has a due process "liberty" interest in a "name clearing" hearing "if the employer creates and disseminates a false and defamatory impression about the employee in connection with his termination." *Codd v. Velger*, 429 U.S. 624, 628 (1977); *Bishop v. Wood*, 426 U.S. 341, 348-49 (1979); *Paul v. Davis*, 424 U.S. 693, 709-710 (1976); *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1972).

Thus, each of four elements must be present for there to be an impairment of an employee's liberty interest such that due process entitles him to a hearing; (1) a specific charge that impugns the employee's "good name, reputation, honor or integrity," *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971); (2) infliction of such a stigma "in the course of the termination of the employment," *Paul*, 424 U.S. at 710; (3) assertion by the employee that the charge is false, *Codd*, 429 U.S. at 627; and (4) "public disclosure of the reasons for the discharge." *Bishop*, 426 U.S. at 348.

There is no question here that the charge against Carroll of squirting caustic cleaning fluid on an inmate in his charge was the basis for his termination and that it "foreclosed his freedom to take advantage of other employment opportunities," *Roth*, 408 U.S. at 573—at least in the law enforcement field. Whether Smith's response to Blakey's inquiry constituted a public disclosure of the charge involves disputed issues of material fact, principally the extent to which Carroll, in his interview with Blakey, had already made the charge public. *See Webster v. Redmond*, 599 F.2d 793, 798 (7th Cir. 1979) (official record of employee's arrest and indictment on charge on which termination was based was public disclosure of the charge for which employer was not responsible, and, thus, did not give rise to due process claim).

The essential element to a due process claim by Carroll which is missing is an averment by him that the

charge which was the basis for his termination is substantially false. The facts of *Codd v. Velger*, *supra*, are strikingly similar to those here. In *Codd*, the plaintiff, having been terminated from his probationary position as a patrolman with the New York City Police Department, was dismissed from a position with the Penn-Central Railroad Police Department when a personnel investigation by Penn-Central turned up a report in the plaintiff's New York City Police Department employment file indicating that, while still a trainee, the plaintiff had put a revolver to his head in an apparent suicide attempt. The Supreme Court reversed the finding of the Second Circuit Court of Appeals that the plaintiff's liberty interest had been impaired such that due process entitled him to a name-clearing hearing. The Court held that because the plaintiff had "at no stage of this litigation affirmatively stated that the 'attempt' did not take place as reported"—only suggesting that " '[i]t might have been all a mistake, [i]t could also have been a little horseplay,' "—he had failed to make the allegation that the report was materially false which is essential to show the deprivation of a liberty interest. *Codd*, 429 U.S. at 628.

While Carroll, unlike Codd, does allege that Scott relied on false reports of the squirting incident in firing him, the discrepancies he points to are just like Codd's. Where Codd failed to deny the apparent suicide attempt but attributed it to mere "horseplay," Carroll does not deny that he thrust a bottle of caustic cleaning fluid at Mangan from which fluid was emitted onto Mangan's face, but contends that he did so while "joking around." At the Supreme Court held in *Codd*, so must this court hold here: "This is not enough to raise an issue about the substantial accuracy of the report." *Codd*, 429 U.S. at 628. This conclusion is strengthened by the fact that there is evidence that the principal factual issue about the incident disputed by Carroll—the presence or absence of *intent* on his part to "squirt" Mangan—was not even a factor in his dismissal. Captain Laben, in the investigation report on which Scott relied in terminating Carroll, stated that,

"[a]lthough I feel that Deputy *Carroll did not intend to seriously harm Vincent Mangan*, I do feel that his lack of judgement [sic] and control do not warrant his retention in the position of Correctional Officer." Defendant's Exhibit A (emphasis added). Laben's conclusion is not inconsistent with Carroll's version of the events in question. Defendant Scott has established that, as a matter of law, plaintiff was not deprived of an interest in liberty for which the due process clause of the Fourteenth Amendment entitles him to a hearing.

For the reasons stated above, defendant's motion for summary judgment is granted, and the cause is ordered dismissed.

ENTER: /s/ BERNARD M. DECKER
United States District Judge

DATED: February 7, 1983.

APPENDIX C

OFFICE OF
Sheriff of DeKalb County

January 27, 1982

Mr. Gary G. Smith, Chairman
DeKalb County Sheriff's Police
Merit Commission
612 Parkside Drive
Sycamore, IL. 60178

Dear Gary:

Attached you will please find a copy of a letter of termination that was transmitted to Probationary Deputy Charles Carroll. Deputy Carroll commenced his employment with this Department on July 10, 1981 and during his employment was assigned to the Corrections Division. All Deputy Sheriff's, who enter this Department through the Merit Commission are required to serve a one year probationary period. During this period should the employee be discharged, I am required by law to notify the Merit Commission in writing of the name of the officer and the reason for dismissal.

An internal investigation has revealed that on January 23, 1982, the above named officer, squirted a solution of cleaning fluid containing toxic chemicals into the face of an inmate, who was then under his direct care and control. This action endangered the safety and well being of the inmate. It is my opinion that this officer violated one of the most important responsibilities a correctional officer has and that is his responsibility to see that the inmates who are entrusted into his care are treated humanely and their safety and well being protected.

As a result of this officers actions and the facts that were revealed through the investigation, I felt that termination of his employment was not only appropriate but necessary. Had this officer been a tenured employee, I can assure you I would have sought dismissal through a Merit Commission hearing. To continue his employment, I feel, would not have been in the best interest of the inmates of this facility and may very well have placed the County of DeKalb in a liability position.

Sincerely,

/s/ WILBUR B. SCOTT
Sheriff

END OF DOCKET